

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ENCOMPASS INSURANCE COMPANY OF  
MASSACHUSETTS,

Plaintiff,

v.

JOSEPH D. GIAMPA, FREDERICK T.  
GIAMPA, ADVANCED SPINE CENTERS, INC.  
d/b/a FIRST SPINE REHAB, FUTURE  
MANAGEMENT CORPORATION, FUTURE  
MANAGEMENT BUSINESS TRUST, EDWARD  
KENNEDY, BRIAN J. CULLINEY, D.C. and  
JENNIFER McCONNELL, D.C.,

Defendants.

Case No. 05-11693 RCL

**EMERGENCY MOTION TO WITHDRAW**

Pursuant to Local Rule 83.5.2 and Massachusetts Supreme Judicial Court Rule 3:07: Rule 1.16, the undersigned counsel respectfully moves for leave to withdraw as counsel for the defendants Dr. Jennifer McConnell and Dr. Brian J. Culliney. In support of this motion, the undersigned counsel states as follows:

1. On or about August 23, 2005, Dr. Brian J. Culliney and Dr. Jennifer McConnell engaged the undersigned counsel to defend them in this matter.
2. Drs. Culliney and McConnell had been introduced to the undersigned counsel by their employer, Future Management, Inc. ("Future Management"). Future Management is also a defendant in this matter and it has, at all times, represented to Drs. Culliney and McConnell that Future Management would pay for their defense.

3. During this introduction, Future Management (through its counsel) requested and the undersigned counsel agreed that he would represent Drs. Culliney and McConnell at a discounted rate of \$175 per hour. At the time, counsel's regular billing rate was \$225 per hour, and it subsequently became \$240 per hour effective January 1, 2006. Nonetheless, the undersigned counsel has at all times billed his time at the agreed rate of \$175 per hour.

4. This matter is legally and factually complex, and has implications for Drs. Culliney and McConnell under theories of both civil and criminal law; Drs. Culliney and McConnell (as well as the remaining defendants) stand accused of a multitude of claims, both statutory and at common law, including claims under the civil RICO statute, claims for fraud and civil conspiracy, and a claim alleging the violation of G.L. c. 93A.

5. This matter is also extremely labor-intensive. Plaintiff's Second Amended Complaint (which counsel recently answered on behalf of Drs. Culliney and McConnell) is monstrous (153 pages and 804 paragraphs of allegations plus 26 pages of attached graphs). As of this date, in addition to filing separate answers for each of Drs. Culliney and McConnell, the undersigned counsel has: (1) drafted and filed separate motions to dismiss Plaintiff's original Complaint (withdrawn at Plaintiff's request to allow it time to file an amended complaint), Plaintiff's Amended Complaint (allowed as to certain counts with leave to amend), and Plaintiff's Second Amended Complaint (denied); (2) drafted and filed a Counterclaim on behalf of Drs. Culliney and McConnell; (3) negotiated and drafted a comprehensive written Indemnification Agreement as between Drs. Culliney and McConnell on the one hand and the defendants Future Management and Advanced

Spine Center's Inc. d/b/a First Spine Rehab ("First Spine") on the other; and (4) complied with the automatic disclosure obligations of Drs. Culliney and McConnell.

6. The undersigned counsel has also participated in numerous lengthy meetings with Drs. Culliney and McConnell relating to the above matters and to various related disciplinary proceedings before the Board of Chiropractors, has appeared before the Court on several occasions, and has attended a number of depositions.

7. As of this date, the undersigned counsel has billed Drs. Culliney and McConnell a total of \$46,357.84, of which \$13,840.00 has been paid by Future Management. The remaining \$32,517.84 remains due and outstanding (almost \$17,000.00 is more than 6 months overdue), and all legally responsible parties -- Drs. Culliney and McConnell as clients, and Future Management and First Spine under the written Indemnification Agreement -- have failed and refused to pay or to even commit to a schedule for payment.

8. Neither Dr. Culliney nor Dr. McConnell has ever expressed to the undersigned counsel any dissatisfaction with his representation, nor have they disputed the amounts billed. On information and belief, Drs. Culliney and McConnell are either unable to pay their legal fees, or are unwilling to pay what they view to be the financial obligations of Future Management and First Spine.

9. Plaintiff has identified in its automatic discovery disclosure at least sixty-six (66) potential fact witnesses and has already issued eighteen (18) notices of deposition for dates between the date of this motion and March 31, 2007 (approximately 6 weeks). In addition, Plaintiff/Defendant-in-Counterclaim has recently filed an extensive

motion to dismiss the counterclaims of all defendants, a response to which will be required.

10. The undersigned counsel is a sole practitioner and has suffered a substantial financial hardship as a result of the non-payment of his legal bills in this matter. It is neither financial manageable nor fair to require counsel to continue with his representation absent remuneration for his services.

11. Discovery in this matter is scheduled to continue for an additional (8) eight months and very few depositions have been taken to date. The only dispositive motion pending before this Court is Plaintiff/Defendant-in-Counterclaim's Motion to Dismiss Counterclaims. Therefore, the withdrawal of the undersigned counsel will not prejudice any party to this action.

12. Drs. Culliney and McConnell have been provided with a copy of this motion.

WHEREFORE, for all of the reasons stated herein, the undersigned counsel respectfully requests that this Honorable Court allow his Motion to Withdraw as counsel of record for the defendants Brian J. Culliney and Jennifer McConnell.

Respectfully submitted,

/s/ Thomas M. Ciampa

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Dated: February 28, 2007

**CERTIFICATE OF SERVICE**

I hereby certify that on this 28<sup>th</sup> day of February, 2007, this document filed through the ECF system pursuant to Local Rule 5.4 will be sent electronically to counsel of record for all other parties and by first-class mail, postage prepaid, upon the defendants Brian J. Culliney and Jennifer McConnell.

\_\_\_\_/s/ Thomas M. Ciampa\_\_\_\_